IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No. 6651 of 1991

For Approval and Signature:

HONOURABLE MR.JUSTICE M.R. SHAH

==========

1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

==========

STATE OF GUJARAT & 1 - Petitioner(s)

Versus

PATEL ZABUBEN KANTIBHAI & 1 - Respondent(s)

==========

Appearance :
MR. D.A.DESAI, AGP for Petitioner(s) : 1 - 2.
UNSERVED-EXPIRED (R) for Respondent(s) : 1,
RULE SERVED for Respondent(s) : 2,
==========

CORAM : HONOURABLE MR.JUSTICE M.R. SHAH

Date : 06/10/2005

ORAL JUDGMENT

1.In this petition under Articles 226 and 227 of the Constitution of India, the petitioner – State of

Gujarat has challenged the legality and validity of the judgment and order passed by the Gujarat Revenue Tribunal dated 28-6-1988 passed in Revision Application No.TEN. BA. 345/85 in allowing the said Revision Application by quashing and setting aside the order passed by the Deputy Collector, Dhangadhra dated 3-1-1985 passed in Revision Case No.1/84-85 and restoring the order passed by the Mamlatdar & ALT, Dasada passed in Ceiling Remand Case No.34 of 1976 dated 14-6-1984.

2. The original land owner Kantibhai Shankerbhai submitted a form / declaration as required under the provision of the Gujarat Agricultural Land Ceiling Act,1960 (hereinafter referred to as “the Act”). The Mamlatdar & ALT, Dasada after processing the said form, by order dated 15-9-1980 declared 16 acres and 18 gunthas of land as surplus land. Thereafter, the matter went up to the Gujarat Revenue Tribunal and the Gujarat Revenue Tribunal by its order dated 21-2-1984 remanded the matter back to the Addl. Mamlatdar & ALT for fresh inquiry on the point that “whether the son of the original land owner – respondent no.2 herein was major on the relevant date i.e. 1-4-1976 or not”. On remand, the Mamlatdar & ALT held that the respondent no.2 herein Patel Gordhanbhai Kantibhai was major on 1-4-1976 and therefore, he is entitled to one additional

unit, therefore, in all the declarant is entitled to two units and therefore, by order dated 14-6-1984, he declared that the declarant is not holding any surplus land. The said order passed by the Mamlatdar & ALT, Dasada dated 14-6-1984 passed in Ceiling Remand Case No. 34 of 1976 came to be taken under suo motu revision by the Deputy Collector, Dhangadhra being Ceiling Revision Application No.1/84-85. Considering the evidence on record, the Deputy Collector, Dhangadhra held that it is not proved that the respondent no.2 was major as on 1-4-1976 and therefore, they are entitled to only one unit as per Section 6(3)(b) of the Act and therefore, set aside the order passed by the Mamlatdar & ALT, Dasada dated 14-6-1984. Being aggrieved by and dissatisfied with the order passed by the Deputy Collector, Dhangadhra dated 3-1-1985 passed in Ceiling Revision Application No.1/84-85, the respondents i.e. heirs of the original land owner Kantibhai Shankerbhai preferred Revision Application No.TEN. BA 354/85 before the Gujarat Revenue Tribunal and the Gujarat Revenue Tribunal by its judgment and order dated 28-6-1988 allowed the said Revision Application by quashing and setting aside the order passed by the Deputy Collector dated 3-1-1985 and restoring the order passed by the Mamlatdar & ALT, Dasada dated 14-6-1984 by holding that

the declarant is not holding any surplus land under the Act as they are entitled to two units. Being aggrieved by and dissatisfied with the judgment and order passed by the Gujarat Revenue Tribunal dated 28-6-1988, the petitioner – State of Gujarat preferred the present Special Civil Application under Articles 226 and 227 of the Constitution of India.

3. Though served, nobody appears on behalf of the respondents.

4. Shri Dipen Desai, learned AGP while assailing the judgment and order passed by the Gujarat Revenue Tribunal, has vehemently submitted that though there is no evidence to prove that the respondent no.2 was major as on 1-4-1976, the Gujarat Revenue Tribunal has allowed one additional unit as if he was major as on 1-4-1976, which is required to quash and set aside. It is also further submitted that though the School Leaving Certificate of the respondent no.2 was produced in which the name of the respondent no.2 was mentioned showing his date of birth as 18-12-1958. Still as in the said School Leaving Certificate, instead of boy, girl is mentioned, the Gujarat Revenue Tribunal has treated the said School Leaving Certificate of his sister Jayaben, which was not permissible at all as the Tribunal ought not to have ignored the name of the

respondent no.2 in the said School Leaving Certificate. It is also further submitted that only on the basis of the statement of Jayaben, sister of the respondent no.2 that his brother i.e. respondent no.2 herein is two years elder than her and therefore, the Gujarat Revenue Tribunal has materially erred in awarding one additional unit to the respondent no.2. It is also further submitted that assuming that the birth date of Jayaben is to be considered 18-12-1958 and her statement that respondent no.2 was two years elder than her, in that case also it is not proved that as on 1-4-1976, the respondent no.2 was major and therefore, as per Section 6(3)(b) of the Act, the total members of the family were only three and therefore, they are entitled to only one unit and therefore, it is requested to allow the present Special Civil Application.

5. This court has gone through the order passed by the Mamlatdar & ALT, Dasada as well as the Gujarat Revenue Tribunal by which it was held that the respondent no.2 was major as on 1-4-1976. It is required to be noted that as such there is no documentary evidence and/or any other evidence to prove that the respondent no.2 was major as on 1-4-1976. Only the statement of Jayaben was recorded. She only stated that her brother was two

years elder than her and on the basis of some certificates of the panchayat, it is held that the birth date of Jayaben might be 18-12-1958 and therefore, it is held that the respondent no.2 was major as on 1-4-1976. It is required to be noted that the School Leaving Certificate of respondent no.2 was produced in which the date of birth is mentioned as 18-12-1958 and in the said certificate, name of the respondent no.2 is specifically mentioned. In absence of any other documentary evidence, the School Leaving Certificate is a reliable evidence and the Tribunal has discarded the same and/or not considered the said certificate of the respondent no.2 only on the ground that in the said certificate, instead of boy, girl is mentioned. The Gujarat Revenue Tribunal has just ignored the fact that in the said certificate, name of the respondent no.2 is specifically mentioned, there might be mistake in mentioning the 'girl' instead of 'boy'. Fact remains that the name of the respondent no.2 was mentioned and there cannot be any mistake. Under the circumstances, both the Mamlatdar & ALT as well as the Gujarat Revenue Tribunal had grossly erred in ignoring the same and in holding that the respondent no.2 was major as on 1-4-1976. In absence of any other material and/or evidence produced on behalf of the

respondents or declarants, the Mamlatdar & ALT and the Gujarat Revenue Tribunal were not justified in holding that the respondent no.2 was major as on 1-4-1976. If it is considered that the respondent no.2 was not major as on 1-4-1976, in that case, members of the family was less than five and therefore, only one unit was permissible and accordingly the Deputy Collector was justified in declaring the land as surplus land by awarding only one unit. The Gujarat Revenue Tribunal has misread the evidence and ignored the material evidence. Therefore, interference of this court is required in exercise of powers under Articles 226 and 227 of the Constitution of India. Even as stated above, assuming that the birth date of Jayaben is considered as 18-12-1958 in that case also, considering her statement that respondent no.2 was two years elder than her, then also, it cannot be said that as on 1-4-1976 the respondent no.2 was major.

6. Under the circumstances, the judgment and order passed by the Gujarat Revenue Tribunal cannot be sustained on evidence and the same is required to be quashed and set aside and the order passed by the Deputy Collector is required to be restored.

7. For the reasons as stated above, the petition succeeds. The judgment and order passed by the Gujarat Revenue

Tribunal dated 28-6-88 passed in Revision Application No.TEN.B.A. 354/85 is hereby quashed and set aside and the order passed by the Deputy Collector dated 3-1-1985 passed in Ceiling Revision Application No.1/84-85 is hereby restored.

8. Rule is made absolute to the aforesaid extent. However, there will be no order as to costs.

(M.R.SHAH,J)

shekhar/-